MISCELLANY.

"Chastisement" and "Correction."—A great deal of merriment, says the "New York Law Journal," has been supplied to generation after generation of law students by the following passage from Blackstone's Commentaries (Book I, 444, 445):

"The husband also, by the old law, might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices—or children, for whom the master or parent is also liable in some cases to answer. But this power of correction was confined within reasonable bounds, and the husband was prohibited from using any violence to his wife, *aliter quam ad virum, ex causa regiminis et castigationis uxoris suae, licite et rationabiliter pertinet.* The civil law gave the husband the same, or a larger authority over his wife, allowing him, for some misdemeanors, *flagellis et fustibus acriter verberare uxorem;* for others, only *modicam castigationem adhibere.* But with us, in the politei reign of Charles the Second, this power of correction began to be doubted, and a wife may now have security of the peace against her husband; or, in return, a husband against his wife. Yet the lower rank of people, who were always fond of the old common law, still claim and exert their ancient privilege, and the courts of law will still permit a husband to restrain a wife of her liberty in case of any gross misbehavior."

Those who accuse the makers of codes of a spirit of wanton radicalism might appropriately be confronted by the statutory definition of excusable homicide in the State of New York. The board of statutory consolidation, in framing the consolidated laws, were not at liberty to change the substance or alter the form of existing law. But it would seem that the adopters of the former penal code were imbued with a spirit of deep conservatism when they accepted section 203 which has now passed into section 1054 of the penal law. This provision is as follows:

"Excusable Homicide.—Homicide is excusable when committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with ordinary caution, and without any unlawful intent."

It is, of course, still the law that a parent may administer corporal punishment in moderation to a child. We should say, however, that "lawfully correcting a servant" in a manner that might inadvertently result in homicide is practically as obsolete as the lawful chastisement of a wife. An interesting moot court question would be how far, under the doctrine of *noscitur a sociis,* or something like it, the statutory association of *correcting* a servant with "any other lawful act, by lawful means, with ordinary caution, and without any unlaw-

ful intent," would serve as a defense, civil or criminal, in a case of the battery of a servant.

On February 24, 1908, we called attention to an attempt to enforce an obsolete statute originally adopted by the Maryland legislative assembly in 1723, and incorporated into Abert's Compiled Statutes of the District of Columbia. It prescribed the most rigid observance of "The Lord's Day, commonly called Sunday," under penalty of the forfeiture of 200 pounds of tobacco. The Court of Appeals of the District of Columbia, in District of Columbia *v.* Charles Robinson, 36 Washington Law Reporter, 101, very properly held that the act was not enforcible. Commenting upon the case we said:

"The decision furnishes an illustration of the necessity of careful periodical revision of statute law. The particular act seems to have been included in the Compiled Statutes of the District of Columbia without critical consideration, and the present proceeding was the first attempt to enforce it. It happened to be actually unconstitutional so that it could be judicially condemned. With regard to many statutes which have become obsolete, in the sense that public opinion would not tolerate their enforcement, yet are not repugnant to the organic law, it is the custom for public prosecutors to treat them as dead letters. It is much better, however, expressly to remove obsolete lumber from the statute book."—Chicago Legal News.

Concerning the Reading of Cases.—"The task of a law writer can very rarely be light, if he undertakes personally to read the cases reported, and to state the effect of them. To ascertain the decision in a single case very frequently requires much patient thought and investigation; and it will readily therefore be apprehended that to gather the law that results from a series of cases, beginning perhaps at a distant period, and most usually determined in different courts and by judges of unequal eminence, is sometimes impracticable, and is constantly exposed to the danger of error. The authority of a case often depends on the court in which, or the learning of the judge by whom, it was decided. The authority of a case may, moreover, be strengthened by the circumstance that it was determined by a 'strong' court, by a court composed of judges of great reputation, or by, or with the concurrence of, a single judge distinguished for his learning; and be weakened by the circumstance that the court were equally divided, or were not unanimous. One authority, or one series of authorities, is contradicted by another; a modern case and one determined some years ago, or even two recent cases, are found to be much, if not directly at variance; and cases that for years have uniformly flowed in a particular direction, are not infrequently met by an opposing stream, strong enough to stem the older current."—Ram on Assets.